IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDCITION

CRIMINAL APPEAL NO.422 OF 1990

The State of Maharashtra ... Appellant
(Orig. complainant)

Versus

Dattu Balu Salgar @ Dhangar... Respondent
(Orig. Accused)

Shri P.S. Hingorani APP for the State
Smt. V.V. Thorat Advocate for the Respondent

CORAM : D.G. DESHPANDE,
& S.R. SATHE,JJ.
DATED : 26th FEBRUARY,2007

ORAL JUDGEMENT :- (PER S.R.SATHE,J.)

1. The State of Maharashtra has preferred this appeal against the judgement and order passed by the Court of Additional Sessions Judge, Kolhapur in Sessions Case No.112/1987 whereby the accused was acquitted of the offence punishable under section 302 of IPC.

2. The brief facts giving rise to this appeal are as under :-

The complainant Annasaheb Bhau Patil was residing at village Valivade, Taluka Karveer, District Kolhapur alongwith his wife Kusum, daughter Ashadevi and son Ajit. The complainant's brother Babasaheb was residing separately near from the house of the

complainant. Complainant had agricultural land at village Valivade. In the year 1987, he had taken sugarcane and maize crop in the said land. It was their practice that during the day time complainant's son Ajit aged about 15 years, used to go to field to protect the crop and at night complainant used to go to field to protect the crop.

3. On 24/01/1987, at night after having meals the complainant went to the agricultural field while his wife Kusum (deceased in the instant case) and daughter Ashadevi aged about 11 years were sleeping in their house. Son Ajit had gone to other place for sleeping. The house of the complainant was consisting of three rooms. The front room was called as Sopa, then the center room and the other room. There was only one entrance to the said house and the front door as well as middle door were having latch from inside.

4. On 25/01/1987, at about 5.00 am, complainant's daughter Ashadevi heard some noise, she, therefore, awoke. She found that the accused was assaulting her mother with sickle when her mother was lying on bed. She had sustained bleeding injuries. The accused was wearing underwear and banian. After seeing the said

incident, Ashadevi raised shouts and accused ran away from the said place with sickle in his hand. Hearing the cry of Ashadevi, the neighbourers also gathered there. When they entered the house they found that Kusum was dead and lying in a pool of blood. Then at about 6.00 am, the complainant's son Ajit also came to the house as somebody informed him that something had happened at his house. The complainant also returned home at about 6.30 am. The persons who had gathered there went to Police Patil and informed him about the incident. He also went to the house of the complainant. When query was made to Ashadevi she told him that accused assaulted her mother Kusum. The complainant Annasaheb Bhau Patil and police patil then went to Karveer Police Station and there the complainant lodged the complaint Exh-32.

5. On the basis of the said complaint, Police registered the offence at C.R. No.20/1987 against the accused for the offence punishable under section 302 of IPC. Police then visited the place of offence and drew the inquest panchanama Exh-9 and sent the dead body for postmortem. They also drew the panchanama of place of offence and attached the clothes of the deceased. Police recorded statements of the witnesses and then,

went to the house of the accused alongwith panchas and arrested him. At that time, police also attached the clothes which were on the person of accused and the underwear which was in the house. After the postmortem Doctor opined that Kusum died as a result of shock due to hemorrhage, due to multiple injuries to thorax and injury to left lung. Police sent the attached property to C.A. After completion of investigation they submitted the charge-sheet against the accused in the Court of CJM, Kolhapur.

6. Finding that the accused were charge-sheeted for the offence punishable under section 302 of IPC which was exclusively triable by the Court of Sessions, the learned CJM committed the case to the Sessions Court, Kolhapur. The Additional Sessions Judge Kolhapur framed charge Exh-2 against the accused for the offence punishable under section 302 of IPC. The charge was read over and explained to the accused. Accused pleaded not guilty and claimed to be tried. His defence was of total denial.

7. In order to bring home the guilt of the accused the Prosecution examined in all 10 witnesses consisting of PW-1 Ashadevi Patil the alleged eye witness at Exh-

21, PW-2 Ajit Patil Exh-22, PW-3 pancha witness Bapu Chougule Exh-23, PW-4 Cousin brother of complainant namely Bapu Patil Exh-26, PW-5 Rajagonda Patil, brother of the deceased Kusum Exh-28, PW-6 Dr. Vishwanath Magadum who did postmortem, PW-7 Police Patil Balasaheb Patil Exh-31, PW-8 Police Constable Maruti Khot Exh-33, PW-9 another police constable Shrikant Kumbhar Exh-34 and PW-10 Investigating Officer PI Sharad Mane Exh-35. Prosecution produced the inquest panchanama Exh-9, Panchanama of the place of offence at Exh-10, panchanama regarding clothes of the deceased at Exh-11, P.M. Notes Exh-14, sketch of the place of offence at Exh-17, C.A. reports Exh-18,19 and 20, panchanama of clothes of the accused Exh-24, complaint Exh-32. During the pendency of the Sessions Case, complainant Annasaheb Bhau Patil died.

8. After considering the evidence adduced by the Prosecution, the learned Trial Judge came to the conclusion that there is no cogent, consistent and convincing evidence to prove beyond reasonable doubt that the accused committed murder of Kusum. According to him, the defence of the accused that he was falsely implicated appeared to be probable. He, therefore, acquitted the accused.

9. The above mentioned order of acquittal is challenged by the State in this appeal.

10. Shri Hingorani, learned APP has urged three points. Firstly, he submitted that the learned Trial Judge has not properly appreciated the evidence on record. According to him, the learned Trial Judge ought to have accepted the testimony of complainant's daughter Ashadevi who had stated that she saw the accused assaulting the deceased. Secondly, he submitted that the Prosecution has also in fact proved the motive by bringing the evidence on record that the accused had illicit relations with Kusum and for that purpose, he was warned by the complainant. Lastly, he submitted that the blood group of the deceased was 'O' and blood stains of the same group were noticed on the shirt and dhoti of the accused. He, therefore, submitted that all this evidence is sufficient to convict the accused. He, therefore, submitted that the appeal be allowed and the accused be convicted for the offence punishable under section 302 of IPC. As against this, Mrs. V.V. Thorat, learned Advocate for the accused supported the judgement and order passed by the learned Trial Judge. She submitted that the evidence of alleged eye witness

Ashadevi is not at all convincing. It does not inspire confidence. The view taken by the learned Trial Judge is reasonable and possible view and as such, the Appellate Court should not interfere with the findings of the learned Trial Judge. She, therefore, submitted that the appeal be dismissed.

11. In the instant case, the defence has in fact not challenged that the death of Kusum was homicidal. The Prosecution has produced at Exh-14 the postmortem report. From the perusal of the same and in particular Column No.17 of the same, it is very clear that there were as many as 17 injuries on the person of deceased. Out of the said injuries about 6 injuries were incise wounds. So, taking into consideration the opinion given by Doctor and the nature of the injuries it is quite evident that the death of Kusum was homicidal.

12. The main and the material question is whether the death of Kusum was caused at the hands of the accused. At the outset it must be mentioned that even according to the prosecution, there is only one eye witness to the incident. PW-1 Ashadevi Patil who is the daughter of complainant aged about 11 years has stated that on the day of incident, she and her mother were

sleeping in the middle or center room of their house. At about 5.00 am, she heard some noise of her mother. When she awoke, she found that accused was assaulting her mother with sickle on mother's head, hand and neck. Naturally, she raised shouts and then, accused ran away with sickle in his hand. She has also stated that at that time, accused was wearing underwear and banian. She has further stated that hearing her cry the neighbourers gathered there and she told them that accused beat her mother with sickle. It is not in dispute that accused was known to Ashadevi even prior to the incident as he was having his cattle shed near their house. The house of the accused was situated away from the said cattle shed. While considering the evidence of witness Ashadevi, the first question that arises is how and when the accused entered the house because according to Ashadevi, she and her mother were sleeping in the middle room. Admittedly, the said house had only one entrance door having latch from inside. Naturally, when Ashadevi and her mother slept in the house at night they must have closed the door from inside. So, question arises how accused entered the room or whether Kusum i.e. deceased herself had opened the door ? Whether she wanted accused to come in the house ? If she had no desire that accused should come

as tried to be suggested by the Prosecution and in particular by witness Bapu Patil Exh-26 then whether the deceased had raised any cry when accused asked her to open the door and if so, why the adjoining neighbourers did not listen any such cry. So, the entry of the accused in the house itself appears to be doubtful. It is in fact tried to be suggested that complainant Annasaheb Bhau Patil i.e. the husband of the deceased Kusum was having some mental problem. He was also taking treatment for that. He was having suspicion about the character of his wife Kusum. He had in fact warned the accused that he should not keep relations with Kusum. It is also tried to be suggested by the defence that on the day of incident the complainant i.e. husband of the deceased Kusum had in fact not gone to the field. There is no specific evidence to show that on that day at night the complainant had actually gone to his field. So, all these things certainly create some doubt about the version of Ashadevi that at the relevant time, deceased Kusum and she were only sleeping in the house and then at about 5.00 am, she heard some noise and then noticed that accused was assaulting her mother. If we see cross-examination of the witness Ashadevi we find that her evidence is totally shaken and shattered in the

cross-examination because she has stated :

> *"It is true that today for the first time, I am telling that my grand mother is staying in the old house. It is correct to say that I have not stated before Police that on that night my father had gone for sleep in the field. It is correct to say that today for the first time, I am telling that I saw accused delivering blows on the head, hand and neck of my mother. It is correct to say that today for the first time I am telling that I told police Patil about the incident."*

From the above mentioned statement of the witness Ashadevi it appears that she had not disclosed the material facts to police Patil and to police immediately after the incident. She has certainly made improvements and there are material omissions and contradictions which create grave doubt about the truthfulness of her evidence. It is her version that when she raised shouts the adjoining neighbourer gathered there and she told them about the incident, however, curiously enough we find that the Prosecution has not examined even a single such adjoining neighbourer. So, there is in fact no independent

witness to say that when they reached at the place of offence Ashadevi disclosed the name of the accused as assailant.

13. PW-2 Ajit Patil, son of the complainant who was aged about 18 years at the time of incident has stated that on the day of incident he had gone to the house of one Pawar for sleeping. Firstly, it is not known as to why he had gone to the house of Pawar leaving his mother and sister i.e. only female members at his house. This assumes importance because it is tried to be suggested by the Prosecution that on that day the complainant was in fact in the house and as such, Ajit had gone to the house of Pawar or he was not sleeping in the house. Ajit has stated that when he returned home in the morning his sister Ashadevi told him that accused murdered his mother with sickle. However, it is pertinent to note that witness Ashadevi has nowhere stated in her deposition that she had told her brother that accused assaulted Kusum with sickle. So, the evidence of Ajit is only in the nature of hearsay evidence and under the circumstances it can not be accepted and relied upon so as to hold that the prosecution has proved the offence.

14. PW-4 Cousin brother of complainant namely Bapu Patil has stated that his house is situated near the house of the complainant. On the day of incident, he heard cry of Ashadevi and hence he went out of his house and asked Ashadevi as to what happened. But she did not give any reply. Ofcourse, the said witness has further stated that subsequently Ashadevi told him that accused assaulted Kusum and ran away. Here again it must be noted that Ashadevi the alleged eye witness has nowhere specifically stated that she told Bapu Patil that accused assaulted Kusum. So, the immediate disclosure of the name of the assailant by Ashadevi is in fact not duly proved. This witness has also stated that deceased Kusum had illicit relations with the accused and about two years prior to the incident, Annasaheb Bhau Patil i.e. complainant had warned the accused and told him not to come to his house and whenever accused used to visit the house of complainant in the absence of complainant, Kusum used to ask the accused to go out of the house and there used to be quarrels. Merely because there is some evidence to indicate that there were illicit relations between Kusum and accused one can not jump to the conclusion under the circumstances of the case that the Prosecution has proved the motive. As pointed out

earlier, if really Kusum had no intention to allow the accused to enter the house, she would not have opened the door and then in such event she would have also raised cry. If we presume that she opened the door willingly and the accused entered then it would indicate that there were good relations between Kusum and him and there was no reason for him to assault Kusum. Incidently, it must be noted that it has come on record that when the Inquest Panchanama was drawn it was noticed that Kusum was not wearing blouse. The evidence of this witness is also in the nature of hearsay evidence and as Ashadevi has not stated that she told the name of the assailant to this witness, the evidence of this witness is of no use to prove the guilt of the accused.

15. PW-5 Rajagonda Patil, brother of the deceased Kusum Exh-28 has stated that 2-3 months prior to the incident when he had gone to the house of complainant, the complainant had made a complaint about the behaviour of Kusum and told him that she had illicit relations with another person. It is pertinent to note that even as per the evidence of this witness the complainant had not told him the name of the present accused as the person with whom Kusum had illicit

relations. So, the evidence of this witness is also of no use to prove the offence in question.

16. PW-7 Police Patil Balasaheb Patil Exh-31, has stated that on the day of the incident at about 6.00 am Annasaheb Patil and Bhupal Patil and Bapu Patil came to him and told him about the murder of Kusum and then he went to the house of the complainant alongwith Kotwal. It is pertinent to note that this witness has not stated that at that time, Bapu Patil told him that accused committed murder of Kusum. If really Bapu Patil had come to know from Ashadevi the name of the accused as assailant as stated by him then certainly when Bapu Patil went to the Police Patil Balasaheb Patil Exh-31 he would have stated accordingly to him. But that has not happened. So, this also suggests that in all probability the name of the accused must not have been told by Ashadevi to witness Bapu Patil. Police Patil has stated that when he reached the house of complainant, complainant was present. He has further stated that he had come from the field. One really does not know on what basis he told that he had come from the field. It is very clear that such statement has been made by this witness in order to show that at the relevant time complainant was in fact not in the house

and had gone to the field on that day at night to protect the crop. But this witness has admitted in the cross-examination that he has not stated accordingly before police. What is more to be noted is that this witness has clearly admitted that he was telling for the first time in the Court that the daughter of complainant told him that accused assaulted Kusum with sickle. So, we find that he has not stated accordingly before Police at any time. Thus, there is material omission and as such, the evidence of this witness that Ashadevi told him that the accused assaulted Kusum with sickle can not be accepted. Thus, we find that the evidence of the eye witness as well as the evidence of other three witnesses namely PW-2 Ajit Patil Exh-22, PW-4 Bapu Patil Exh-26, and PW-7 Police Patil Balasaheb Patil Exh-31 to whom the alleged disclosure about the name of the assailant was made is not at all cogent, consistent and convincing and it in fact creates grave doubt about their evidence. So, the learned Trial Judge rightly observed that the evidence on record was not sufficient to prove beyond reasonable doubt that the accused assaulted Kusum with sickle.

17. The learned APP argued before us that in the instant case, the accused was arrested on the day of

incident in the afternoon and at that time, the clothes i.e. shirt and dhoti which were on the person of the accused were attached and when the same were sent to C.A., he opined that there were blood stains on the said clothes. If we see the C.A. Reports Exh-19 and 20, we do find that C.A. has opined that the stains which were found on the dhoti and shirt were of 'O' group and blood group of the deceased was also 'O'. However, it is pertinent to note that even as per the evidence of witness Ashadevi at the relevant time, accused was only wearing underwear and banian and as soon as she raised cry, the accused ran away in such condition with sickle in his hand. So, the question arises how there could be blood stains on shirt and dhoti. No any explanation is given by the Prosecution regarding this discrepancy. What is more to be noted is that the C.A. has opined that there were no blood stains on the underwear and banian of the accused which were sent to C.A. So, the Prosecution evidence in this behalf is also of no help to them.

18. In view of the above, we find that the learned Trial Judge has appreciated the entire evidence in its proper perspective and has recorded the finding of acquittal. The finding recorded by the learned Trial

Judge is not shown to be unreasonable, improbable, perverse or illegal. So, under such circumstances, we do not find any reason to interfere with the said findings. Hence we pass the following order :-

O R D E R

Appeal is dismissed.

The bail bond of the accused stands cancelled.

(D.G. DESHPANDE,J.)

(S.R. SATHE,J.)